IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5485 of 1998
With
CIVIL APPLICATION No. 1418 of 2000
In
SPECIAL CIVIL APPLICATION No. 5485 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANGITA EDUCATION TRUST - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR AK CLERK WITH MR JOY MATHEW for Petitioner(s) : 1,
MR MR MENGDEY, AGP for Respondent(s) : 1, 3,
MR AD OZA for Respondent(s) : 2,
MR MUKUND M DESAI for Respondent(s) : 4 - 5.
MR BP GUPTA for Respondent(s) : 4 - 5.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 09/02/2007

ORAL JUDGMENT

1. The petitioner Sangita Education Trust runs a school called Jivanprakash Vidyavihar School which is a Secondary and Higher Secondary School. This school was situated at Ramrajyanagar near Vastral road, Ahmedabad. In the year 1995, the school management desired to shift the school from Ramrajyanagar to Isanpur, also in Ahmedabad. The application for that purpose was filed on 22nd December, 1995 to the Gujarat Secondary Education Board, respondent no.2 herein. Respondent no.2 however, rejected the application of the petitioner by order dated 26th July, 1996. It is however, the case of the petitioner that the said order of rejection was not communicated to the petitioner by the Board.

1.1 It is further the case of the petitioner that on 17th August, 1996 under the belief that their application for shifting of the school is still pending with the Board, on account of pressure from students and teachers and local residents, the petitioner applied for withdrawal of its application for shifting of the school.

1.2 It is however, the case of respondents that letter dated 17th August, 1996 purported to have been written by the petitioner was not received by the Board.

1.3 It appears that power of attorney was

given in favour of respondent no.4 to act on part of the petitioner-trust on 4th January, 1996. It may be noted that shortly thereafter, on 28th June, 1996, such power was withdrawn.

1.4 Respondent no.5 herein was appointed as Managing trustee of the petitioner-trust by resolution dated 10th June, 1996. It is however, the case of the petitioner that shortly thereafter, by resolution dated 20th June, 1996, respondent no.5 was removed from the position of Managing trustee of the petitioner trust. Despite such removal, according to the petitioner, respondent no.5 made an application to the respondent no.2-Board on 21st September, 1996 seeking review of order dated 26th July, 1996 by which the Board had turned down the request of the petitioner to permit shifting of the school.

2. Apparently, acting on such application, respondent no.2 passed an order on 24th December, 1996, permitting the petitioner to shift the school from Ramrajyanagar to Isanpur.

3. At this stage, it may be noted that since the petitioner apprehended that respondent no.4 was and would misuse the power of attorney though cancelled, filed a civil suit before the City Civil Court praying for injunction restraining

respondent no.4 from acting on the basis of such power. On 5th April, 1997, City Civil Court granted such injunction in favour of the petitioner-trust. It is stated that the said proceedings are still pending before the Civil Court and injunction is still in operation.

4. Upon coming to know about the respondent no.2-Board having passed an order of shifting of the school, the petitioner appealed against the same before the State Government. The State Government however, declined to interfere by its impugned order dated 19th June, 1998 produced at Annexure-P to the petition.

5. In this petition, the petitioner was initially granted interim relief staying operation of the order passed by the State Government on 19th June, 1998. Subsequently, though the stand of the petitioner was that the order passed by the Board on 24th December, 1996, should have been taken to have merged with the appellate order passed by the State Government, by way of abundant caution, also prayed for stay of the order of the Board. Learned Single Judge of this Court on 7th February, 2000 was pleased to suspend the operation of order dated 24th December, 1996 passed by the Board also.

6. It may be noted that at the instance of respondents no. 4 and 5 herein, the interim

order passed by this Court on 7th February, 2000, was carried in Letters Patent Appeal. Division Bench of this Court on 8th March, 2000, passed the following order :

> "In the circumstances, we direct the parties to maintain status quo with regard to 2 schools as existing today. & hope that the Ld.Single Judge will take up the matter for final decision at an earlier date looking to the interest of the institution & carrer of the students. With directions, the L.P.A. is disposed of."

7. Before me, learned advocate Shri A.K. Clerk appearing with Shri Joy Mathew for the petitioner submitted that the petitioner-trust after having initially requested for shifting of the school had changed its mind on account of pressure from various quarters such as students, teachers and local residents and had requested the Board not to grant such permission. He submitted that the Board having once rejected the application of the petitioner for shifting of the school could not have revised that order without proper application. He submitted that respondent nos. 4 and 5 had no authority to represent the petitioner trust. He submitted that respondent no.4 who was for a brief while given power of attorney, was misusing such a power and that therefore, power was promptly cancelled. Despite, such cancellation, since the said respondent was acting on the basis of such cancelled power, the petitioner had to approach the City Civil Court and obtain injunction.

7.1 He further submitted that respondent

no.5 was appointed as Managing Trustee for only about 10 days and was promptly removed from the said position by the trust. The said respondent therefore, could not have represented the interest of the trust before the Board.

8. Learned advocate Shri B.P. Gupta for respondent nos. 4 and 5 submitted that when this Court granted stay against the order passed by the State Government initially, the school was already shifted and operational at Isanpur. He submitted that respondent no.5 was acting as the Managing Trustee of the petitioner trust and had proper authority which was given by the trust to follow applications for shifting of the school.

9. Learned advocate Shri A.D. Oza vehemently submitted that the petitioner as well as respondent nos. 4 and 5 both sides have committed gross irregularities in running of the schools. He submitted that on account of breach of legal provisions of law, it is not advisable to grant relief to the petitioner. He submitted that petition should be dismissed. Reliance was placed on the decision of Hon'ble Supreme Court in the case of **C.B.S.E. and another v. petitioner. Sunilkumar and others** reported in 1998 5 SCC 377, to urge that this Court should not grant relief in favour of unscrupulous school management which has breached provisions of law prompted only on the basis of sympathy

for students.

9.1 Reliance was also placed on the observations made by Learned Single Judge of this Court on 12th March, 1999 in Special Civil Application No.1570/1999, wherein Learned Judge observed that the petitioner management had unauthorisedly admitted the students at Ramrajyanagar.

10. Learned AGP Shri Mengdey supported the order passed by the State Government and submitted that petition has no merits.

11. Having heard learned advocates appearing for the parties, short question that calls for consideration is whether the petitioner should be compelled to shift the school from Ramrajyanagar to Isanpur.

12. As noted earlier, initially though the petitioner desired to shift the school and also applied to the Board for granting such a permission on 22nd December, 1995, the Board rejected such an application on 26th July, 1996. It is the case of the petitioner that such rejection was not communicated to the petitioner. Be that as it may, the fact remains that the application of the petitioner for shifting of the school was at one stage turned down by the Board. If thereafter, there was any

further order to be passed, the same had to have some foundation or basis upon which such reconsideration could have taken place.

13. One may also notice that the petitioner after having desired to shift the school, changed its mind on account of pressure from local students and residents.

14. As noted earlier, respondent no.4 was only acting on power of attorney and, in any case, such power was cancelled by the petitioner trust apprehending that such power once granted would be misused. The petitioner also preferred a civil suit and obtained injunction against respondent no.4 acting on such power.

15. Respondent no.5 who was for a short while appointed as Managing Trustee of the petitioner trust from 10th June, 1996 to 20th June, 1996, apparently, applied to the Board on 21st September, 1996 to review its decision to reject the application of the petitioner trust to shift the school. Though the Board was not fully aware about the authorisation of respondent no.5 to make such an application, the fact remains that the petitioner trust did not desire at that stage that the school be shifted. Even if there is some dispute about the removal of respondent no.5 from the position of Managing Trustee of the petitioner trust, fact remains that as a

Managing Trustee, he could not have had a stand which was diametrically opposite to that adopted by the petitioner trust. He could have only represented the wish of the general body of the trust and could not have acted independently or detrimental to the interest of the trust. If the general opinion of the trust was that the school be not shifted, respondent no.5 in his individual capacity could not have approached the Board seeking to shift the school.

16. In that view of the matter, application dated 21st September, 1996 filed by respondent no.5 was wholly unauthorised. As noted earlier, though respondent no.2 Board cannot be blamed for having acted on such an application, fact remains that having once turned down the request of the petitioner trust to shift the school, the Board later on revised its decision on an application which I find was wholly unauthorised. In that view of the matter, the subsequent decision of the board dated 24th December, 1996 was illegal. In the same token, the appellate order passed by the State Government also cannot stand. It may be true that after the Board passed its order dated 24th December, 1996, there was no stay in favour of the petitioner trust and that the petitioner therefore, did not have any authority to operate the School from Ramrajyanagar. However, fact remains that as far back as in February, 2000,

Learned Single Judge of this Court granted stay in favour of the petitioner initially staying the order passed by the State Government in appeal and, thereafter, also suspended the order passed by the Board. Sum total of these orders would be that since year 2000, the petitioner was permitted to operate its school from Ramrajyanagar. Seven more years have passed since then. I see no reason to uproot the school from Ramrajyanagar and insist that it must be shifted to Isanpur against the wish of the management, against the wish of the local residents and students. It is nobodies case that there was no need of school at Ramrajyanagar. In fact, on the basis of felt need, the Board granted permission to the petitioner to start such a school and also granted recognition and registration. Had the petitioner not applied for shifting of the school, the entire controversy would never have arisen.

17. The concern of learned advocate for the Board however, cannot be ignored. If the school management has indulged into any irregularities, surely, it is open for the authorities to inquire into the same. I express no opinion on such issues. Suffice to say, despite quashing of the orders, it would be open for the authorities to inquire into any acts of omission and commission on part of the petitioner management and pass appropriate orders in accordance with

law.

18. As noted earlier, Division Bench of this court in Letters Patent Appeal had granted status-quo on 8th March, 2000. It is not in dispute that under this order, there is also a school running at Isanpur. Despite this order, therefore, it would not be appropriate to disrupt the education of the students admitted in the school at Isanpur mid-term. Therefore, the order of status-quo granted by Division Bench on 8th March, 2000 would continue to operate on the same basis till the end of the current academic term. It will be open for respondent no.2 Board to suitably accommodate the students of both schools for the purpose of Board examinations.

19. It is expected that beyond the said period, respondent nos.4 and 5 will not continue to impart education from the school at Isanpur without proper registration and if any application is made to the Board for such purpose, same may be considered expeditiously.

20. With this clarification, the petition is allowed. The impugned orders dated 24th December, 1996 and 19th June, 1998 passed by the Board as well as the State Government are quashed. Rule is made absolute. No costs.

ORDER IN CA :

In view of the order passed in the main matter, Civil Application does not survive, same is disposed of accordingly.

(Akil Kureshi,J.)

(raghu)